

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the Franchise Investment Law relating to the increase of the franchise fee allowed to \$500 from \$100 under the de minimis exemption from registration.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., April 9, 2001. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

Comments or inquiries concerning these proposed regulation changes may be directed to Kathy Womack, Staff Services Analyst, or if not available, contact Karen Fong, Senior Legal Typist at (916) 322-3553. Inquiries on the substance of these proposed regulations should be directed to William Kenefick, Acting Commissioner. Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814. (916) 322-3553. Comments can also be faxed to (916) 322-5875 or sent by e-mail at kwomack@corp.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department regulates the offer and sale of franchises under the Franchise Investment Law ("FIL"). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been registered with the Commissioner or is exempt from registration. The FIL provides several exemptions from registration.

One of the exemptions, Rule 310.001, sets forth an exemption pursuant to Section 31110 of the Corporations Code, based on the policy that the offer and sale of a franchise should not be subject to registration where the franchisee is required to pay a franchise fee, on an annual basis, that does not exceed the sum or \$100. The franchise fee amount of \$100 has not been updated or changed since the initial adoption of this exemption in 1972.

The Federal Trade Commission rule adopted under Title 16 of the Federal Code of Regulations, Section 436.2(a)(B)(iii) (16 CFR 436.2(a)(B)(iii)), provides for a similar exemption. The Federal Trade Commission provides an exemption from the disclosure requirements of Rule 436 if the fee the franchisee is required to pay to the franchisor or an affiliate of the franchisor, from any time before to within six months after commencing operation of the franchise, is less than \$500.

The Department of Corporations proposes to amend Rule 310.001 to increase the de minimis amount of the exemption to \$500 from \$100, thereby making the exemption consistent with the federal rule. The Commissioner has also determined that a franchise fee of \$500 or less is not a significant financial risk on the part of the franchisee.

AUTHORITY

Sections 31110 and 31502, Corporations Code.

REFERENCE

Sections 31011, 31110, 31111, 31112, 31113, 31114, 31115, 31116, 31117, 31118, 31119, 31120, 31121, 31122, 31123, 31124 and 31125, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION(S)

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 20/00-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact persons designated below. Request Document OP 20/00-C. These documents are also available at the Department's website www.corp.ca.gov. A copy of the final statement of reasons once it has been prepared will be made available on the Department's website and be made available through the Department's contact persons. Request Document OP 20/00-C Final. As required by the Administrative Procedure Act, the Office of Policy maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 1515 K Street, Suite 200, Sacramento, California.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.

- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- No other nondiscretionary cost or savings are imposed on local agencies.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

- The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not have an effect on housing costs.
- Does not affect small businesses. The proposed amendment increases the de minimis amount of the exemption from disclosure requirements of Rule 436 if the fee the franchisee is required to pay to the franchisor is less than \$500. Small businesses will not be required to comply with or enforce the proposed regulation. The Department has determined that small businesses will neither derive a benefit from nor incur a detriment from the enforcement of the proposed regulation.
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

CONTACT PERSONS

Comments or inquiries concerning these proposed regulation changes may be directed to Kathy Womack, Staff Services Analyst, or Karen Fong, Senior Legal Typist at (916) 322-3553. Inquiries on the substance of these proposed regulations should be directed to William Kenefick, Acting Commissioner. Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814. (916) 322-3553. Comments can also be faxed to (916) 322-5875 or sent by e-mail at kwomack@corp.ca.gov.

Dated: February 13, 2001
Sacramento, California

WILLIAM KENEFICK
Acting Commissioner

